

MHNS070002142022

SC No. 44 of 2022

State
Vs
Mohammad Zahid Anees Ahmad
@ Kachchi,(A-14)**ORDER BELOW EXH. NO.136**

1] This is third bail application after filing of charge-sheet under section 439 of the Code of Criminal Procedure filed by accused in C.R.No.75 of 2021 registered with City Police Station, Malegaon under sections 307, 353, 332, 143, 144, 147, 148, 149, 120-B, 427, 186 of I.P.C., section 3 and 4 of Police (Incitement to Disaffection) Act 1922 and 37(1) (3) punishable under section 135 of Maharashtra Police Act and section 3(2) of Prevention of Defacement of Property Act.

2] Read the application and say (Exh.137).

3] Heard both the sides. Advocate for accused submitted that accused was arrested on 14.11.2021. This is his first regular bail application. There are no criminal antecedents. In the FIR, the name of the accused is figured at Sr. No. 7. As per the allegations in the FIR, on the basis of CCTV footage and video recording the name of accused is revealed. He submitted that no identification parade is conducted. It is not the case of the prosecution that the witness who identified the accused (A-14) was previously acquainted with him. The name of accused is shown as an assailant on the police persons, but no CCTV footage is shown. None of the witness has stated that he has seen the accused while pelting the stones or assaulting by rod. There is no separate and distinct role mentioned in the statement. All the statements are stereotype. The allegations are vague. Only in one medical certificate the injury is shown to be grievous. No opinion from the doctor was obtained that said injury is possible by iron rod or stick. He then drew my attention to the memorandum statement in the recovery panchanama and submitted that the place where the article has been kept is not mentioned in the memorandum statement. Therefore, it has

no evidential value. He submitted that in the reply, the grounds are taken in respect of the incident shown in CR No. 74 of 2021 and CR No. 76 of 2021. Considering the number of accused the trial will take its own time. Accused No.14 is in jail since last 7 months. He submitted that attendance can be ordered on any terms and conditions, he be enlarged on bail.

4] APP submitted that there are specific allegations against the accused in the FIR with name. Accused is seen and identified on the basis of CCTV footage. The bail application of co-accused having identical role has been rejected by this court. The accused has taken active participation in the offence. Therefore, he prayed that the application be rejected.

5] This is first bail application after filing of charge sheet by accused Zahid Kachchi (A-14). I have gone through the complaint, supplementary statement of complainant. I find that complainant named the accused with his specific role in the offence. I have gone through the statement of other witnesses with the injury certificate. I find that on the basis of the CCTV footage the role of the accused in the crime and his involvement has been revealed during the investigation. At page 17 of the charge-sheet in the police paper, as per the memorandum statement at the instance of the accused iron rod has been seized. So prima facie there is sufficient material to connect the accused with the crime under which he has been booked.

6] The role of co-accused who have been released on bail is materially different from the role attributed by accused. Therefore, on the ground of parity, the accused is not entitled for bail. The ratio laid down in Arun Kumar Vs. Police Inspector Colva, 2022 ALL MR (Cri.) 1019 is not applicable to the case in hand.

7] Considering the facts and circumstances of the present case, the role attributed by the accused in the incident, the possibility of committing similar kind of offence cannot be ruled out. The act

committed by the accused is anti social, causing disturbance to the peace and creating law and order problem in the society. Therefore, the ratio laid down in Ajay Vishnu Bhoir and Anr vs. State of Maharashtra, 2021 All MR (Cri.) 3979 on which the advocate for accused is relied on is not helpful.

8] In the present case there are eye witnesses of the incident of dacoity. The complainant has specifically named the accused and the act committed by him. Therefore, the ratio laid down in Mahesh Arun Bhaware vs. State of Maharashtra, 2021 ALL MR (Cri) 4255 is not applicable to the case in hand. Considering the role attributed by the accused in the crime, I find that on the ground of parity the accused is not entitled for bail. Hence, the ratio laid down in Smti Bhiva Vaidya and Anr. Vs. State of Meghalay, 2021 ALL MR (Cri) 71 is not applicable to the case in hand.

9] The Hon'ble High Court in Ranjit Kalyan and Anr vs. State of Gova, 2021 ALL MR 3981 has passed order in the writ jurisdiction under article 226 of the Constitution regarding the two FIRs in respect of the same incident. Hence, I find that the ratio laid down therein is not applicable for the bail application pending before this court. Considering facts and circumstances of the present case, prima facie, I find there is sufficient material on record against the accused to show his active participation and involvement in the crime. If he is enlarged on bail, there is a possibility of tampering with the witnesses. Considering the gravity of the offence, I find that the accused is not entitled for the bail. In the result, following order is passed.

ORDER

The application is rejected.

Date : 04.06.2022

(D. D. Kurulkar)
Additional Sessions Judge, Malegaon.

